IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 12TH JANUARY 2007 / 22ND PAUSHA 1928

OP.No. 8822 of 2003(A)

PETITIONER:

P.DAMODARAN, AGED 49 YEARS,
S/O. DIVAKARAN NAMBOOTHIRI, POONTHOTTAM MANA,
VENGERI TEMPLE LANE, OTTAPPALAM.

BY ADV. SRI.V.V.SURENDRAN
SMT.SANIKA.V.S.

RESPONDENTS:
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1. LABOUR COURT, CALICUT.

2. THE PRESIDENT,
OTTAPPALAM CO-OPERATIVE BANK LTD., OTTAPPALAM.

BY ADV. SRI.M.V.BOSE
SRI.VINOD MADHAVAN
SMT.NISHA BOSE
BY GOVERNMENT PLEADER SRI.SURARSHAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 12/01/ 2007 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP. NO.15280/2003 IN OP. NO.8822/2003

DISMISSED

12.1.2007 **SD/- S.SIRI JAGAN, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE STATEMENT FILED BY THE PETITIONER.

EXT.P2:- COPY OF THE STATEMENT FILED BY THE MANAGEMENT.

E.XT.P3:- COPY OF THE REJOINDER FILED BY THE PETITIONER.

EXT.P4:- COPY OF THE M3 STATEMENT IN THE ENQUIRY.

EXT.P5:- COPY OF THE AWARD OF THE 1ST RESPONDENT.

/TRUE COPY/

tss

S. SIRI JAGAN, J.

O.P. No. 8822 OF 2003 A

Dated this the 12th day of January, 2007

J U D G M E N T

The workman in ID No.16/96 of the Labour court, Kozhikode is the petitioner herein. He challenges Ext.P5 award in that ID wherein it was found that the termination of service of the petitioner is valid and proper but interfering with the punishment imposed by converting the punishment of termination of service of the petitioner into that of discharge from service. The issue referred for adjudication is,

> " Whether the action of the management in having terminated the service of Sri.P.M.Damodaran, Junior Clerk is justifiable? If not, the relief which the workman is entitled to".

Since the management contended that the petitioner's services were terminated after conducting an enquiry, in which he was found guilty, the Labour court is considered the question of validity of the enquiry itself first. The Tribunal by a preliminary order which has not been produced before me, found that the enquiry was proper and valid and the findings in the enquiry were also supported by sufficient evidence adduced in the enquiry. In short, the misconduct alleged against the workman was found to be proved. Since the misconduct

involved misappropriation of amounts although the Tribunal found that the same is grave enough, taking a lenient view converted the termination of service into discharge from service.

2. Although the petitioner contends that the enquiry was not proper, to prove the same, the petitioner has not chosen to produce the preliminary order, which contains the reasoning of the Labour court to find that the enquiry is proper and valid. Even in this original petition, the petitioner does not challenge the enquiry on the ground of violation of principles of natural justice. His only contention is that the findings in the enquiry are perverse. In the absence of the preliminary order itself, the petitioner could not satisfy me that the findings of the enquiry officer are perverse. Nor has he produced any material to show that the findings are perverse. My jurisdiction under Article 226, in a challenge against award of the Labour court is confined only to the extent of examining whether the findings are perverse or not. Since the petitioner has not been able to prove before me by any acceptable material that the findings are in any way perverse, I do not find any merit in the contentions of the petitioner and accordingly the original petition is dismissed.

(S. SIRI JAGAN, JUDGE)

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S. SIRI JAGAN , J.

OP No.8822/03A

J U D G M E N T

12th January, 2007